

**Advanced Transportation and Alternative Source Manufacturing
Sales and Use Tax Exclusion Program ("Program")**

Master Regulatory and Title Conveyance Agreement

This Master Regulatory and Title Conveyance Agreement ("Master Agreement"), dated _____, 20__ ("Effective Date"), is between the California Alternative Energy and Advanced Transportation Financing Authority ("CAEATFA"), located at 915 Capitol Mall, Room 457, Sacramento, California 95814, and _____ ("_____" or "Company"), a - _____, with offices at _____, _____, California _____. Collectively, the parties to this transaction are referred to as the "Parties."

RECITALS

Pursuant to Division 16 (commencing with Section 26000) of the Public Resources Code (the "Act"), CAEATFA provides financial assistance for facilities for the design, manufacture, production or assembly of advanced transportation technologies or alternative source products, components or systems.

[INSERT COMPANY & PROJECT DESCRIPTION FROM THE STAFF SUMMARY]

The Company applied to CAEATFA for financial assistance for the transaction contemplated by and between the Parties in this Master Agreement, (the "Application"). The Application (Project Narrative and Qualified Property List) is attached hereto as Exhibit A.

The CAEATFA Board approved the Company's Project for financial assistance under the Program on _____.

The transactions contemplated by and between the Parties in this Master Agreement are designed and intended to be excluded from the State of California sales and use tax, pursuant to Revenue and Taxation Code §6010.8.

The Parties agree that Sections 2, 3 and 4 set forth the Conveyance and Reconveyance provisions of this Master Agreement.

AGREEMENT

1. Qualification

A. *Financial Assistance.* CAEATFA agrees and has found by resolution that the transactions described herein qualify as "Financial Assistance" pursuant to California Public Resources Code §26003(e)(2) and §26011.8.

B. *Project.* CAEATFA agrees and has found by resolution that the purchase of the Qualified Property followed by the Conveyance and the Reconveyance, in multiple similar transactions, is collectively a "Project" pursuant to California Public Resources Code §26003(g)(2).

C. *Participating Party.* CAEATFA agrees and has found by resolution that _____ meets the definition of a "Participating Party" pursuant to California Public Resources Code §26003(f)(1).

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2. Purchase by Company from Vendors

A. *Selection and Purchase of Qualified Property.* Throughout the Term of this Master Agreement, the Company agrees to purchase up to [\$ _____] of tangible personal property utilized for the design, manufacture, production or assembly of advanced transportation technologies or alternative source products, components or systems ("Qualified Property") from one or more vendors for the "Project" as described in the Application. The sum of all such assets, as measured by original purchase price of assets is referred to as the "Aggregate Asset Price". The Qualified Property will be selected by the Company in its sole discretion and the transactions will take place at the discretion of the Company and in multiple installments. The Qualified Property will include, but not be limited to, the materials or equipment described in the attached Exhibit B.

B. *Assistance by CAEATFA to Secure Exclusion from Sales and Use Taxes.* The Parties anticipate that the State Board of Equalization ("SBE") will agree that such purchases by the Company from vendors of the Qualified Property are excluded from California state and local sales and use taxes under Article 13, Section 35(b) of the California Constitution, Revenue and Taxation Code §6352 and SBE Regulation 1667 (18 Cal. Code Regs. §1667). CAEATFA agrees to provide reasonable assistance to the Company to secure such exclusion.

C. *Cooperation.* CAEATFA agrees to advise any such vendor that the Company is purchasing such Qualified Property as part of a transaction that CAEATFA has by resolution determined to be a "Project" as defined in Public Resources Code Section 26003(g)(2), that the Company is a "Participating Party" as defined in Public Resources Code Section 26003(f)(1), and that CAEATFA has agreed to provide "Financial Assistance" for the Company as defined in Public Resources Section 26011.8 in the form of this Master Agreement.

3. Conveyance to CAEATFA; Reconveyance to Company

A. *Conveyance by the Company.* Upon acquisition of title of the Qualified Property, the Company agrees to convey, and CAEATFA agrees to acquire all right, title, and interest in such Qualified Property (the "Conveyance"). The Company will notice CAEATFA for the full purchase price for the Qualified Property.

B. *No Use by the Company.* The Company will represent and ensure that the Qualified Property will not be put to functional use until the Conveyance and Reconveyance (as defined below) transactions have been completed.

C. *Conveyance Back to the Company.* Immediately following the Conveyance to CAEATFA, but in any event not to exceed 10 days from CAEATFA's receipt of a complete Conveyance by the Company to CAEATFA accompanied by the appropriate Administrative Fee set forth in Section 10036 of Title 4 of the California Code of Regulations, CAEATFA will convey such Qualified Property back to the Company (the "Reconveyance").

D. *Other Terms.* The Parties agree that there will be no fees for the Conveyance or the Reconveyance other than those set forth in Section 10036 of Title 4 of the California Code of Regulations. The Qualified Property will remain in the possession of the Company **[and shall remain subject to a security interest in favor of _____ (the "_____Lien").**

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CAEATFA agrees that it will not impose or otherwise permit any liens on the Qualified Property. The Parties agree that there will be multiple Conveyance and Reconveyance transactions throughout the Term of this Master Agreement. The Parties also agree that in no event shall the Aggregate Asset Price exceed [\$_____].

E. *Limitation on Ancillary Qualified Property.* The Parties agree that Qualified Property necessary for the operation of the Facility and located on the same site as the Facility, but not directly used for the design, manufacture, production or assembly of advanced transportation technologies or alternative source products, components or systems shall not exceed one percent (1%) of the total Aggregate Asset Price.

F. *Amendment of Exhibit B.* The Company agrees that it will amend Exhibit B with an aggregate individualized list of all Qualified Property purchased from vendors which has been conveyed and reconveyed. The Company agrees that the amended Exhibit B will be submitted to CAEATFA within 30 days after the Initial Term of the Conveyance and Reconveyance provisions of this Master Agreement as defined below in Section 5(A).

4. Conditions Precedent

This Master Agreement is subject to the following conditions precedent:

A. *CAEATFA Approval.* The Application by the Company for financial assistance from CAEATFA shall have been approved by CAEATFA.

B. *Certification.* The Company shall provide certification to CAEATFA with each proposed Conveyance under the Master Agreement that the Qualified Property to be conveyed will be installed, maintained and operated at a site within the State of California.

5. Term and Termination

A. *Initial Term.* The term of the Conveyance and Reconveyance provisions of this Master Agreement shall be for a term of _____ years after CAEATFA's approval of the Application, or until the Aggregate Asset Price is reached, or when the final conveyance/reconveyance agreement is executed, whichever occurs first. The term of the remainder of this Master Agreement shall be for a term of [This number is either three or a calculation of one half the Estimated Useful Lifespan of the longest lived item of Qualified Property identified in the Application (CAEATFA Regulations10035(a)(2))Please delete this section for final document] _____ years.

B. *Audit.* Any information provided by the Company to CAEATFA is subject to an audit and verification. Upon a 10 business day notice to the Company, the Company will permit CAEATFA or its designee, during normal business hours, to inspect the relevant files of the Company solely for the purposes of verifying eligibility of the transactions under the California Public Resources Code. Results of any audit pursuant to this paragraph may be forwarded to the Board of Equalization for possible enforcement actions. CAEATFA will provide the Company with notice of its intent to take such action and the basis for that action 10 business days prior to the action.

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C. *Termination.* If CAEATFA determines that the Company has violated any terms of this agreement, then CAEATFA may terminate this Master Agreement.

D. *Rescission.* Following a finding that an Applicant has provided false information pursuant to Section 10035(c)(5) of Title 4 of the California Code of Regulations or has otherwise violated the Master Agreement, the Authority may, after written notice to the Applicant, rescind the approval resolution and conveyance/reconveyance agreement, in addition to other remedies. Upon a final decision by the Authority, the approval resolution and conveyance/reconveyance agreement shall be rescinded, and notice of the rescission may be provided to the Board of Equalization.

E. *Notice.* Prior to taking any adverse action against the Company under Section 5(C) CAEATFA will provide the Company with written notice of its intent to take such action and the basis for that action and will provide the Company with at least 30 calendar days to cure. CAEATFA retains the right to not meet the Reconveyance provisions of this Master Agreement during this time period.

6. Regulatory Provisions

A. *Twenty-Five Percent (25%) of Qualified Property Purchases in the First Year Requirement.* The Company agrees to make purchases of at least twenty-five percent (25%) of the Aggregate Asset Price within one year of the date of CAEATFA's approval of the Application.

B. *Annual Certification Letter and Annual Compliance Report.* The Company shall submit to CAEATFA, by January 31 each year with information reported for the previous calendar year, a "Certification Letter and Compliance Report." The Certification Letter must document that the Qualified Property has been used for the purposes specified in the Application for the entire period since the Conveyance and Reconveyance pursuant to this Master Agreement and has been installed, maintained and operated within the State of California except as provided in Section 10035(b)(1)(F). The Annual Compliance Report shall contain total payroll, number of permanent and construction jobs, total annual product sales (in dollars), number of units sold, anticipated corporate or personal income tax related to the Facility, amount spent on supplier purchases including the fraction of purchases from California Suppliers, total amount of Qualified Property purchased to date, description of project status and consistency with the timeline in the Application, anticipated purchase dates of additional Qualified Property, explanation of any material changes to the product or manufacturing process implemented since the approval of the Application, and a statement indicating the fraction of time the Qualified Property has been used to make Advanced Transportation or Alternative Source products, components, or systems. CAEATFA may request other information reasonably related to the purposes of the Program.

C. *Retention of Records.* The Company shall retain records necessary to document information provided in the annual Compliance Reports and Certification Letters for at least five (5) years after the date of the latest Certification Letter or Compliance Report required by this Master Agreement.

D. *Program Compliance.* The Company shall at all times be in compliance with the Act and the Regulations promulgated there under, and ensure that any contractors or

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subcontractors shall at all times be in compliance as appropriate. Continued compliance with Program requirements is the Company's responsibility.

E. *Recovery of Financial Assistance.* The Authority may seek recovery of the Financial Assistance actually utilized in cases in which the Applicant: (1) does not meet the substantial use requirements identified in Section 10033(b)(1)(A) or (2) removes the Qualified Property purchased from the State of California prior to the shorter of (a) the expiration of the term of the Regulatory Agreement or (b) three years except as provided in Section 10035(b)(1)(F).

The recovery of Financial Assistance will be in the amount of the estimated sales and use tax exclusion actually utilized as determined by CAEATFA at the time of conveyance ("STE Amount") plus a fixed rate of five percent (5%) of the STE Amount.

7. Miscellaneous

A. *Assignment.* This Master Agreement shall not be transferred or assigned to any other person provided, however, that in the event a person acquires all or substantially all of the assets of the Company, then CAEATFA will authorize the transfer of the Company's rights under this Master Agreement to the successor in interest if (a) the person agrees in writing to assume all of the duties and responsibilities of the Company under this Master Agreement; and (b) CAEATFA makes a determination, which determination will be made on a reasonable basis, that such a transfer would be consistent with and serve the purposes of the California Public Resources Code and this Master Agreement.

B. *Severance.* If any clause, provision, or section of this Master Agreement is held illegal or invalid by any court, the invalidity of that clause, provision, or section shall not affect any of the remaining clauses, provisions or sections hereof and this Master Agreement shall be construed and enforced as if such illegal or invalid clause, provision, or section had not been contained in this Master Agreement.

C. *Notices.* All notices, certificates, requests or other communications shall be sufficiently given when delivered, if delivered by registered or certified mail, postage prepaid, return receipt requested, or by messenger or professional courier service, addressed as follows:

Attention: Executive Director
California Alternative Energy and Advanced Transportation Financing Authority
915 Capital Mall, Room 457
Sacramento, California 95814

If to the Company:

Attention: _____

_____, California _____

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D. *Entirety.* Subject to the Act, this Master Agreement and the Exhibits attached to it contain the entire Master Agreement between the Company and CAEATFA with respect to the matters described herein and supersede any and all previous Agreements. This Master Agreement may not be amended except with the written consent of CAEATFA and the Company.

E. *Captions.* The captions in this Master Agreement are for convenience only and in no way define, limit or describe the scope of intent of the provisions in this Master Agreement.

F. *Governing Law.* This Master Agreement will be governed by and interpreted in accordance with the laws of the State of California.

G. *Liability.* The Company releases CAEATFA from, and covenants and agrees, to the extent permitted by law, to indemnify and hold harmless CAEATFA and the California State Treasurer and their members, officers, employees and agents (the "State Indemnified Parties") from and against, any and all losses, claims, damages, liabilities, taxes (and interest and penalties) or expenses (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments), of every conceivable kind, character and nature whatsoever (including, without limitation, federal and state securities laws) arising out of, resulting from or in any way connected with (1) the Project, or the conditions, occupancy, use, possession, conduct or management of, or work done in or about the Project or the other facilities of the Company or its participating affiliates, or from the planning, design, acquisition, construction, rehabilitation, renovation, improvement, installation or equipping of the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Master Agreement; (3) any violation of any environmental regulations or the release of any hazardous substance from, on or near the Project or any other facilities of the Company or its participating affiliates; or (4) the taxability of the sale or use of the Project, or allegations that the sale or use of the Project is taxable or any regulatory audit or inquiry regarding whether such tax is applicable; provided that with respect to indemnification of the State Indemnified Parties, such indemnity shall not be required for damages that result from the gross negligence or willful misconduct on the part of the party seeking such indemnity and with respect to any other indemnified party, such indemnity shall not be required for damages that result from the negligence or willful misconduct on the part of the party seeking such indemnity. The Company further covenants and agrees, to the extent permitted by law, to pay or to reimburse CAEATFA and its members, officers, employees and agents for any and all costs, reasonable attorneys fees and expenses, liabilities or other expenses incurred in connection with investigating, defending against or otherwise in connection with any such losses, claims, damages, liabilities, expenses or actions, except to the extent that the same arise out of the gross negligence or willful misconduct of CAEATFA and its members, officers, employees and agents claiming such payment or reimbursement. Notwithstanding the foregoing, the Company shall not have any liability to CAEATFA and the State Indemnified Parties for any losses, claims, damages, liabilities, taxes (and interest and penalties) or expenses (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments), of every conceivable kind, character and nature whatsoever (including, without limitation, federal and state securities laws) arising solely from acts or omissions by CAEATFA.

H. *Insurance and Risk of Loss.* The Company agrees and covenants that it bears all risk of loss relating to any damage, loss, destruction or any other harm to the Qualified

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Property. The Parties agree that although title will be conveyed by the Company to CAEATFA, at no time will CAEATFA have possession of the Qualified Property. The Parties further agree that CAEATFA shall have no duty or obligation to obtain insurance of any kind relative to the Qualified Property.

I. *Compliance with Applicable Local, State and Federal Laws and Regulations.* The Company agrees and covenants that all Project Qualified Property conveyed under this Master Agreement will be installed, maintained and operated in accordance with all applicable local, state and federal laws and regulations.

J. *No Waiver.* Any waiver by either CAEATFA or the Company of any obligation in this Master Agreement must be in writing. No waiver shall be implied from any failure of CAEATFA or the Company to take, or any delay or failure by CAEATFA to take action on any breach or default or Event of Default by the Company or to pursue any remedy allowed under this Master Agreement or applicable law.

K. *Execution of Counterparts.* This Master Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument; provided, however, that only the counterpart delivered to CAEATFA shall be deemed the original.

[The remainder of this page is intentionally left blank.]

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The Parties have executed this Master Agreement as of the Effective Date.

**California Alternative Energy and
Advanced Transportation Financing
Authority**

By: _____

By: _____

Christine Solich
Executive Director

EXHIBIT A

Application

Project Narrative

EXHIBIT A
(Continued)

Qualified Property List from Application

EXHIBIT B

List of Qualified Property

[illegible]

(Continued)

[illegible]

Total \$